

Withdrawal of Strangers*

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Abstract: Transparency and accountability are at the core of our democratic system. The publication of Commonwealth Parliamentary debate is something taken for granted by citizens of our modern democracy—the publication of parliamentary debates through chamber documents and Hansard transcripts, the broadcast of proceedings and plethora of media coverage has brought visible decision making into the everyday. In time of crisis, however, the Parliament’s appetite for public decision making may be tested, and during the Second World War, ‘strangers’ were ordered to withdraw from the House of Representatives chamber on three occasions. Joint secret meetings of members and senators were held in the House chamber, with certain others present. This article will delve into the context of these orders, the definition of ‘strangers’, any public reaction, and the philosophical dichotomy of transparency and necessary opacity

INTRODUCTION

There are various aspects of the matters to which I have referred which honorable members may think can be discussed more freely

in a private meeting. I, therefore, direct attention to the presence of strangers in the House.³⁴

On 20 August 1941, the Right Honorable Robert Gordon Menzies, K.C., Prime Minister and Minister for Defence Co-ordination, drew the attention of the House to the presence of strangers. The order for the withdrawal of strangers from the House of Representatives has only been used in wartime, on three occasions during the Second World War. There is an expectation in our modern representative democracy that debate will be public, as transparency and accountability are at the core of our democratic system. Holding power to account was set out in Magna Carta, and has informed the development and guided the evolution of our own representative democracy. Debates are published, for the benefit of parliamentarians and the public, through chamber documents and Hansard transcripts, the broadcast of proceedings and plethora of media coverage. In time of crisis, however, the Parliament's appetite for public decision making may be tested, and on three occasions the 'strangers' present were ordered to withdraw. The context of these orders, the public reaction to being identified as a stranger, and the philosophical dichotomy of transparency and necessary opacity are worth examination, particularly in light of current events such as COVID.

PROCEDURAL FOUNDATIONS OF PRIVATE DECISION MAKING

The concept of decision making in secret is not unfamiliar to a modern democratic citizen, and is best seen in the operation of the Cabinet, the 'apex of executive government' in which ministers are summoned by the Prime Minister to debate, but ultimately arrive at, a shared policy position.³⁵ Public *parliamentary* debates, however, in which representatives are able to put forward a view or argument and hear those of other members, are an important part of our representative democracy and there is an expectation that debate will be public. In other words, Cabinet is the secret internal debate to reach a publicly-stated policy direction; Parliament is the public forum for consensus-based decision making, and it is assumed it will sit publicly and openly.

³⁴ R. Menzies, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 11.

³⁵ Mark Rodrigues, 'Cabinet confidentiality', *Parliamentary Library Background Note*, 28 May 2010, p. 1.

As with so much of our parliamentary procedural foundation, we share this with Westminster. The *Australian Constitution* provides that, until such time as the powers, privileges and immunities of each House are declared, they shall be those of the House of Commons.³⁶ The Australian Parliament declared these powers, privileges, and immunities in the *Parliamentary Privileges Act 1987* (PPA). The application of privilege during the period discussed here would be that afforded to the House of Commons, but the particular circumstances for each private session are very different and would need to be considered when assessing whether privilege attached to the decision making undertaken during private session. The PPA is clear that ‘all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House’ are covered by parliamentary privilege.

The UK Parliament introduced the Standing Order to allow the withdrawal of strangers in 1875—prior to this, the public could be excluded from the galleries at any time on a member taking note of their presence and the Speaker would be obliged to order their withdrawal, without putting a question.³⁷ The word ‘stranger’ was removed from the motion in 1998. The House of Commons Standing Order 163 provides that at any sitting of the House, any member may move that the House sit in private, and the question shall be put. If agreed to, the galleries are cleared, reporting staff must withdraw, broadcasting ceases and the Chair may authorise a short suspension for this to happen. Erskine May notes that this is a rare occurrence in peacetime.³⁸ The UK Houses sat in private during the First and Second World Wars. On these occasions, a two-stage process was followed: first to agree to sit in private; and then to agree to go into secret session, with the divulgence of proceedings of a ‘secret session’ being a more serious matter and engaging the provisions of wartime security legislation. Sitting in secret was reported in 1 January 1940 edition of Lismore, NSW’s newspaper *The Northern Star*, in its London Letters correspondent column. The column noted that the House of Commons had sat in secret to discuss problems of war supplies, and explained that:

³⁶ *Australian Constitution 1901* (Cth) s49.

³⁷ Erskine May, *Proceedings in private and secret sessions*, para 17.22.

³⁸ May, *Proceedings in private and secret sessions*, para 17.22

The right to sit behind closed doors goes back to the days when Parliament was fighting for its privileges, and wished to be able to keep its debates secret from the King and the Royal Family.

Now, of course, the motive of a secret session is quite different, and the King was fully informed of what took place.³⁹

The article points out that with 1,400 people attending the secret session, it is inevitable that information would leak out (to a waiting press, no doubt) and so the utility of such a session is in doubt, as ‘any really vital secret...would eventually leak out—which is a sound reason why no such secrets are likely to be divulged by Ministers, even behind closed doors’. The remainder of the column does in fact highlight the difficulties of supply of petrol and mistletoe, but reassures that there is still plenty of whisky. In December 1945, the UK Parliament resolved that proceedings from secret sessions of the last Parliament need not be kept secret.⁴⁰

STRANGERS AND VISITORS

The traditional parliamentary term ‘stranger’ has been noted as ‘yet another symbol of the ancient privileges of Parliament’, reinforcing the divide between member and non-member and ‘the fact that an outsider is permitted within the confines of the [parliament] on tolerance only and not by right’.⁴¹ In the House of Representatives, a stranger was:

...any person present in the Chamber (including the galleries) who was neither a Member nor an employee of the House of Representatives performing official duties. Parliamentary reporting

³⁹ ‘London Letter: British Parliament’s Secret Session’, *The Northern Star*, 1 January 1940, p. 10.

⁴⁰ May, *Proceedings in private and secret sessions*, para 17.22.

⁴¹ Norman Wilding and Philip Laundry, *An encyclopaedia of Parliament*. London: Cassell, 1972, p. 729.

staff, as employees of the Parliament, were not normally regarded as strangers.⁴²

Renamed 'visitor' in 2004, the definition was changed to be 'a person other than a Member or parliamentary official' and broadened in 2016 to provide that an infant cared for by a member was not a visitor. Visitors may be admitted by the Speaker into the lower galleries, and distinguished visitors admitted to a seat on the floor of the chamber.⁴³ The House deliberated in private in wartime, however in peacetime, strangers were refused access to the galleries in 1920 to prevent the interruption of proceedings, when the Deputy Speaker issued an instruction that all strangers should be excluded from the Chamber galleries due to a large gathering outside Parliament House in Melbourne.⁴⁴ *House of Representatives Practice* notes the use of the motion 'That strangers be ordered to withdraw' without the expectation that the motion would be agreed to was used as a delaying or disruptive tactic. Former House Standing Orders provided for any Member to put the question, to be decided without debate.⁴⁵ This motion was deployed, unsuccessfully, on a number of occasions and in 1963 appears to have been a tactic of last resort after a series of divisions and a closure motion during the second reading debate on Appropriation Bill (No. 2) 1962-63.⁴⁶ The current House Standing Orders do not have an explicit provision for such a motion, but Standing Order 66(d) does provide for a Member to interrupt another Member to 'call attention to the unwanted presence of visitors'.⁴⁷

⁴² David Elder (ed.), *House of Representatives Practice*. Canberra: Department of the House of Representatives, 2018, p. 115.

⁴³ Elder, *House of Representatives Practice*, p. 115. House of Representatives Standing Order 257(a).

⁴⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 29 July 1920, pp 3078–9.

⁴⁵ See, for example, former House of Representatives Standing Order 314. 'If at any sitting of the House, or the Main Committee, any Member takes notice that strangers are present, the Speaker or the Chair, as the case may be, shall forthwith put the question 'That strangers be ordered to withdraw', which shall be decided without debate: Provided that the Speaker or the Chair may, whenever he or she thinks fit, order the withdrawal of strangers from any part of the Chamber or room in which the Main Committee is meeting.

⁴⁶ Votes and Proceedings (VP) 1962-62/80 (2.5.1963).

⁴⁷ House of Representatives Standing Order 66(d).

PARLIAMENT'S RESPONSE TO THE OUTBREAK OF WAR

The announcement of Australia's involvement with the Second World War was made publicly by Prime Minister Menzies on 3 September 1939, on every national and commercial radio station in Australia.⁴⁸ Menzies had been Prime Minister for just under six months, and led a minority United Australia Party Government after the death of sitting Prime Minister Joseph Lyons. Two weeks later after the announcement of war, Menzies also publicly announced the formation of the War Cabinet to be the main decision-making body on the conduct of the war, and which was originally a standing committee of the full Cabinet. The War Cabinet, made up of Ministers as directed by the Prime Minister and other ministers as required, would 'deal with all matters in relation to the conduct of the war other than matters of major policy',⁴⁹ with matters of major policy determined by the full Cabinet. The War Cabinet and full Cabinet reversed these roles over the next year, with the War Cabinet rising in prominence.⁵⁰ Meetings were held at Victoria Barracks, Melbourne, and in the Cabinet room at Parliament House, Canberra.

After the September 1940 general election, Menzies retained power but relied on the support of two independents. Menzies offered to form a 'national government' with opposition leader John Curtin, which was declined and instead the joint-party War Council was formed. By the end of 1940, the question of whether Menzies would travel to London during the parliamentary recess was a hot topic in the press, with Menzies stating that any trip would rely on stronger political stability at home.⁵¹ By February 1941, Menzies was travelling to meet Australian troops in North Africa, and participating in the British War Cabinet in London. Menzies also undertook an unpublicised trip to Ireland with the hope of ending Irish neutrality, which antagonized Winston Churchill.⁵² Menzies returned to Australia in May 1941 to find internal party

⁴⁸ Australian War Memorial, 'Second World War, 1939-1945'. Accessed at: <https://www.awm.gov.au/articles/second-world-war>.

⁴⁹ Minutes of the full Cabinet meeting, Melbourne, 26 September 1939. National Archives of Australia: A2697/XR1, Vol 2.

⁵⁰ John Curtin University, 'The War Cabinet and Advisory Council'. Accessed at: <http://john.curtin.edu.au/behindthescenes/cabinet/index.html>.

⁵¹ 'Menzies May Visit London', *The Sun*, 12 December 1940, p. 3.

⁵² A. W. Martin, 'Menzies, Sir Robert Gordon (Bob) (1894–1978)', *Australian Dictionary of Biography*. Accessed at: <https://adb.anu.edu.au/biography/menzies-sir-robert-gordon-bob-11111>, 2006.

support waning after open plotting against him during his absence.⁵³ Menzies again offered suggestions for a 'national government'; again declined. After an emergency cabinet meeting, at which a majority of ministers agreed that a new leader was needed, Menzies resigned the Prime Ministership on 29 August 1941. In October, the two independents Menzies had relied on crossed the floor, and the coalition government (then led by the Right Honourable Sir Arthur Fadden) was brought down.⁵⁴ John Curtin became the Prime Minister, and went on to lead the Labor Party to a large majority in the 1943 general election.

The instability of a minority government at a time of crisis, deep political divisions within the governing coalition, and the need for the Prime Minister to be absent for months were played out in the papers. The political turmoil of the time was very public, with news articles reporting on major and minor political machinations and gossip amidst the backdrop of world war. The extraordinary offer of a joint-party government and efforts to increase political stability (however unsuccessful) were part of unusual decisions being made during a time of crisis.

‘I, therefore, direct attention to the presence of strangers in the House’

December 1940

During debate on Defence Estimates on 12-13 December 1940, the Member for Bourke suggested that 12.30am may not be the time for 'tired men, excited by the statements we have heard' to be considering the matter, and requested that debate be adjourned to the next week 'when they can be disposed of in calm discussion'.⁵⁵ The Prime Minister noted a suggestion made by Leader of the Opposition John Curtin to discuss the matters in private. Prime Minister Menzies then directed the attention of the Chair

⁵³ Martin, 'Menzies, Sir Robert Gordon (Bob) (1894–1978)', *Australian Dictionary of Biography*.

⁵⁴ On 2 October 1941, the House resolved itself into the Committee of Supply and debated the amendment moved by Mr Curtin that salaries and allowances to the Senate be reduced by £1. After debate the next day, the question was resolved in the affirmative, indicating a lack of support for the Government. Prime Minister Fadden submitted the resignation of his Government, and Mr Curtin was commissioned by the Governor-General to form government. The Curtin Government was sworn in on 7 October 1941. This was the last time an Australian government resigned after being defeated in the House.

⁵⁵ M. Blackburn, Commonwealth, *Parliamentary Debates*, House of Representatives, 13 December 1940, p. 1054.

to the presence of strangers. The Chairman (the House was sitting as the Committee of Supply), then put the question that the strangers be ordered to withdraw. The motion was agreed to on the voices, and recording of debates was suspended from 12.32am to 3.30am. Upon resumption of recording of debates, the proposed vote of £3,112,500 for the Department of the Navy was agreed to. Debate then moved to the Department of the Army. Notable in this, the first time the House met to debate in private, is the absence of any dissent from the motion, discussion on the parameters of the meeting, and the fact that the *House* is not suspended—the *recording* of the debates is. Notable also, is that the vote is agreed to once the recording of the debates is resumed. Debate may have been in private, but the outcome of the decision is reported publicly, and the amount disclosed.

The Votes and Proceedings, the official record of the proceedings of the House, continued to record the proceedings in the private meeting:

Debate continued. *Withdrawal of Strangers*.—Mr. Menzies having taken notice that strangers were present— Question—That strangers be ordered to withdraw—put and passed. *Chairman's Ruling*.—The Chairman stated that he did not regard Honorable Senators as strangers. Debate continued. Ordered—That Mr. Cameron be granted a further extension of time. Debate continued. Ordered— That strangers be admitted.⁵⁶

Later in the all-night sitting, the Member for Barker and the Member for Darling Downs had an argument about the role of the Advisory War Council. The Member for Barker accused the Government of sheltering behind ‘a body like that’ and questioned its constitutionality, saying that: ‘The council is not composed of a pack of strangers. They are members of this Parliament...’.⁵⁷ The pejorative use of the word ‘strangers’ is interesting, coming hours after the first successful order for the withdrawal of strangers, meaning the public and reporting staff. In this instance, the Member for Barker seems to be drawing on the deep divide between parliamentarians and the

⁵⁶ VP 1940/13 (13.12.1940).

⁵⁷ A. Cameron, Commonwealth, *Parliamentary Debates*, House of Representatives, 13 December 1940, pp 1073-74.

public to say that the Advisory War Council should be held to account as they are members of the Parliament.

May 1941

On 29 May 1941, the House again agreed to the withdrawal of strangers. Prime Minister Menzies stated that members may wish to be ‘given some opportunity to discuss certain matters privately’, and again directs the attention of the Speaker to the presence of strangers. The Speaker put the question, and it was resolved in the affirmative on the voices. This time, however, sitting was suspended from 3.15pm to 11.21pm. The Votes and Proceedings record that the Speaker left the Chair, and then resumed it prior to the order that strangers be admitted.⁵⁸ Sitting resumed on the motion that strangers be admitted, and business continues. Three minutes after the resumption, the House adjourned until the next day. The Votes and Proceedings do not record what happened after suspension. The *Hansard* records the topic of discussion as ‘Secret Meeting of Senators and Members’.⁵⁹

August 1941

The last time the House sat in secret was 20 August 1941, nine days before the resignation of the Prime Minister. In the Votes and Proceedings, the order is swiftly put and passed, and proceedings were suspended from 3.55pm when the Speaker left the Chair, resuming at 10pm. The House again permitted the presence of Senators (although noted that they are strangers), agreed to the withdrawal of reporting staff and suspended. Unlike the other two instances, the *Hansard* record of the lead up to this event illustrates the weight of the decision to deliberate in private and records the Members setting out their concerns with this question.

After Prime Minister Menzies delivered a lengthy speech on International Affairs (Ministerial Representation in London), a paper on ‘Recent Developments in International Affairs and proposal that Prime Minister should visit London’ was tabled and ordered to be printed ‘in order that there may later be public discussion of this matter’. It is perhaps ironic that the importance of public debate on this matter was

⁵⁸ VP 1940-41/25 (29.5.1941)

⁵⁹ R. Menzies, Commonwealth, *Parliamentary Debates*, House of Representatives, 29 May 1941, p. 55.

acknowledged immediately before the attention of the House was drawn to the presence of strangers. The debate in the chamber then moved to the nature of meeting in private, and the concerns of Members, although the question was resolved on the voices very quickly. On the question of whether reporting staff should remain, the Speaker stated that:

By a very old ruling of this House, members of the official reporting staff are officers of this House, and they are not covered by the resolution excluding strangers. That rule, of course, was passed in times very much different from the present; there was no war then. If I interpret the wish of the House correctly, there is no desire that the ensuing proceedings be reported, and, therefore, members of the Hansard staff need not remain in the chamber.⁶⁰

The Speaker's observation that conditions had changed significantly since the conventions were agreed, as 'there was no war then', highlights the tension of the time—a nod to the need to adapt, even if it leads to actions which are inconsistent with expectation and long-held convention. It may also raise some metaphorical eyebrows that propriety is something to be evaluated on an as-needs basis rather than considering the principles at stake.

A half hour debate was then had on the question that 'Officers of the Parliamentary Reporting Staff withdraw', and before the sitting is suspended, Members discuss the sort of meeting they are about to have in private. The Member for Dalley asks whether the discussion will be 'a glorified question time' or an *in camera* discussion of the Prime Minister's statement, stating that the decision to remove the reporting staff will depend on the answer.⁶¹ Prime Minister Menzies clarifies that the discussion will be on his statement, but notes that the House may agree to the printing of the paper upon public resumption:

What I propose is that Mr. Speaker shall suspend the sitting of the House of Representatives by leaving the Chair. Then we may have a private meeting of the kind that we have had before, at which

⁶⁰ W. Nairn, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 12.

⁶¹ S. Rosevear, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 12.

senators may be present and members and senators may discuss any of the matters covered by my statement. A joint private meeting would save time because I have made a proposal which involves consideration by the parties. Subsequently, when the House resumes its sitting, if a public debate is desired, it will be facilitated by the motion for the printing of the paper.⁶²

The Member for East Sydney notes that no records were kept of past private joint meetings, and that after these meetings, references were made in the House to certain statements made during the unrecorded time. The Member for East Sydney stated that, without an official record, no one could establish what had been said.⁶³ Given the uncertain application of privilege to words spoken during a suspension of the sitting, the Clerks at the Table may have been grateful that this matter does not appear to have been pursued as a breach of privilege.

The Member for East Sydney asked whether members and senators would have access to the full supporting evidence in order to make their decisions:

I want to know as much as possible of the evidence which is before the Government and the Advisory War Council. Having excluded strangers in order that momentous questions may be discussed and confidential matters mentioned, every member of Parliament should be in a position to examine the evidence that the Government possesses.⁶⁴

The Prime Minister stated that the secret cables between governments would not be circulated, and discussion moved to the utility of Hansard for members and the importance of records. There was no dissent raised to the private meeting, but concerns were noted over members' access to the official records and recordings of the debates for their own reference. Mr Curtin highlighted that ordinary proceedings are one thing, but this is a time of war:

⁶² R. Menzies, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 11.

⁶³ E. Ward, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 12.

⁶⁴ E. Ward, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 12.

I, therefore, believe that Ministers and all honorable members who have information to impart owe it to their fellow counsellors to impart it to them. But this is a time of war, and the subjects that will be under discussion relate to the safety of the country and the relationship of this Government to other governments. In the very nature of things, it is impossible to state these matters in this place if they are to be subsequently quotable to the public at large.⁶⁵

Members discussed whether they would be able to discuss the matters debated in private, with the following exchange between Mr Curtin and the Member for East Sydney, with Mr Curtin stating:

...I see no occasion for Hansard to be present except for the purpose of taking such records of what is said in this place as are to be used by the people of Australia at large in judging us.

Mr. ROSEVEAR.—How much of what is said here to-day will limit the right of honorable members to discuss the proposal publicly?

Mr. CURTIN.—There will be no limitation except so far as an honorable member may say, 'I do not think I ought to use that as a reason for what I did'.

Mr. ROSEVEAR.—It is a method of 'gagging' Parliament.

Mr. CURTIN.— I have put up with it for some time, and while this country is in danger, I shall still put up with it.

GOVERNMENT MEMBERS.—Hear , hear!⁶⁶

Mr Curtin's statement that Hansard provides the people of Australia with the opportunity to judge the conduct of members is an interesting admission. He further notes that not only is meeting in private a form of gagging debate, but one that Mr

⁶⁵ J. Curtin, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 13.

⁶⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 14.

Curtin will 'put up with'. Mr Curtin refers to his 'responsibility' to make decisions, and his own weighing up of what should be made known publicly to others. Drawing on the distinction between the Parliament and the people inherent in the discussion of the withdrawal of strangers, Mr Curtin said that: 'We, not the people, are charged with the government and safety of this country.'⁶⁷

In the minutes before the House ordered the withdrawal of strangers for the last time, the Member for Barker seems to have had the last word:

I am still very doubtful of the usefulness of secret meetings. They begin nowhere, go nowhere and end nowhere, and the decisions which this country so badly needs will not be arrived at by these methods.⁶⁸

CONCLUSION

The extraordinary resolution, on three occasions, to remove strangers from the House of Representatives so that '*momentous questions*' might be discussed in private has only been agreed to in times of war. By the members' own statements, the decisions made in wartime are different from those made in times of peace. The members' trepidation to order the withdrawal of strangers appears to grow over time, perhaps coinciding with the increased secrecy over the three uses of the order. The first time the order is used, the House does not suspend and the Votes and Proceedings continue to record the proceedings of the House. The second time, the House is suspended. The third time, there is a lengthy debate on the nature of the debate and the need for a private meeting, before it is ultimately resolved in the affirmative.⁶⁹

⁶⁷ J. Curtin, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 14.

⁶⁸ A. Cameron, Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1941, p. 14.

⁶⁹ The House continued to meet privately, as agreed in the House on 8 October 1942. In this instance, the House agreed in the morning to meet privately at 8pm that night, and adjourned to the next morning. Strangers were not ordered to withdraw, and no discussion appears to have taken place regarding the meeting. The motion was agreed to by leave: That a joint meeting of members of the Senate and of the House of Representatives be convened for 8 p.m. this day, for the purpose of discussing in secret the present war, and hearing confidential reports in relation thereto.' Commonwealth, *Parliamentary Debates*, House of Representatives, 8 October 1942, p. 1514.

Although the tradition of public parliamentary debate was subverted during this time of crisis, the public could know that even if decisions were being made in secret based on information not accessible to the public, that at least the parameters of the decision making would be made known. Public trust could be maintained in the institution during this time of crisis. The media refers to the secret sittings, reports that they may occur in advance of their moving in the House, and there are numerous references to the House of Commons sitting in secret. There is a perhaps surprising lack of criticism for the occurrences, which may be attributable to the distinction between peace and wartime being drawn by members and the media. One news article from the time referred to the secret sessions of the British Parliament, and noted that:

...it must always be remembered that in time of war it is quite impossible for the public to be fully informed. There are many matters that have to be concealed from the enemy, and this can be done only by keeping them as secret as possible. For this reason public opinion is occasionally wrong.⁷⁰

Strangers, visitors, enemies—sometimes there is a need for things to be kept behind closed doors.

⁷⁰ 'British Cabinet Turmoil', *The Northam Advertiser*, 13 January 1940, p. 2.